

tect, not to destroy, the inalienable rights of men. (1 Story Constitution, sec. 207; *Taylor vs. Porter*, 4 Hill's Reports, 147; 2 Dallas, 471; *People vs. Morris*, 13 Wendell, 328.) This has been the common understanding in our whole history, and upon which governments have been created.

The Continental Congress of 1774, composed of delegates from twelve colonies, in their Declaration of Rights, among other things, declared:

"That the inhabitants of the English colonies of North America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following rights:

"Resolved. That they are entitled to life, liberty, and property, and that they have never ceded to any sovereign Power whatever a right to dispose of either without their consent."—*Hurd on Habeas Corpus*, chap. 5, p. 107.

The Declaration of Independence affirms—

"That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, Governments are instituted among men."

The Constitution was established, as its preamble declares, to—

"Promote the general welfare and secure the blessings of liberty."

All the law-writers agree that every citizen has certain "absolute rights," which include—

"The right of personal security, the right of personal liberty, and the right to acquire and enjoy property. These rights have been justly considered and frequently declared by the people of this country to be natural, inherent, and inalienable."—1 *Kent's Commentaries*, 599; *Federalist*, No. 84.

In *Wilkinson vs. Leland*, 2 Pet. 657, Judge Story said:

"The fundamental maxims of a free Government seem to require that the rights of personal liberty and private property should be held sacred. At least no court of justice in this country would be warranted in assuming that the power to violate and disregard them—a power so repugnant to the common principles of justice and civil liberty—lurked under any general grant of legislative authority."

(See *Turret vs. Taylor*, 9 Cranch, 43; *People vs. Morris*, 13 Wend., 328; *Taylor vs. Porter*, 4 Hill, 147; *Fletcher vs. Peck*, 6 Cranch, 87.)

The bill of rights to the national Constitution declares that :

"No person" \* \* \* \* "shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation."

It has never been deemed necessary to enact in any constitution or law that citizens should have the right to life or liberty or the right to acquire property. These rights are recognized by the Constitution as existing anterior to and independently of all laws and all constitutions.

Without further authority I may assume; then, that there are certain absolute rights which pertain to every citizen, which are inherent, and of which a State cannot constitutionally deprive him. But not only are these rights inherent and indestructible, but the means whereby they may be possessed and enjoyed are equally so.

We learn from Coke that—

"When the law granteth anything to any one that also is granted without which the thing itself cannot be."—*Oath before the Justices*, 12 Co., 130; *Heard vs. Pierce*, 8 Cuss. 333-345.

In law the incident always adheres to and accompanies the principle. (Broom's Legal Maxims, 198; 20 Ohio R., 409.)

It is idle to say that a citizen shall have the right to life, yet to deny him the right to labor, whereby alone he can live. It is a mockery to say that a citizen may have a right to live, and yet deny him the right to make a contract to secure the privilege and the rewards of labor. It is worse than mockery to say that men may be clothed by the national authority with the character of citizens, yet may be stripped by State authority of the means by which citizens may exist.

Even Shylock, when the decree of confiscation was pronounced against him, reasoned better; for he said:

"Nay, take my life and all, pardon not that;

Every citizen, therefore, has the absolute right to live, the right of personal security, personal liberty, and the right to acquire and enjoy property. These are rights of citizenship. As necessary incidents of these absolute rights, there are others, as the right to make and enforce contracts, to purchase, hold, and enjoy property, and to share the benefit of laws for the security of person and property.

Now, there are two ways in which a State may undertake to deprive citizens of these absolute, inherent, and inalienable rights: either by prohibitory laws, or by a failure to protect any one of them.

If the people of a State should become hostile to a large class of naturalized citizens and should enact laws to prohibit them and no other citizens from making contracts, from suing, from giving evidence, from inheriting, buying, holding, or selling property, or even from coming into the State, that would be prohibitory legislation. If the State should simply enact laws for native-born citizens and provide no law under which naturalized citizens could enjoy any one of these rights, and should deny them all protection by civil process or penal enactments, that would be a denial of justice.

Yet twelve years have not passed since these and other hostile measures against naturalized citizens were gravely discussed in several of the States, and beyond this, it was urged that their political rights should be denied or so abridged as to be useless. History is full of instances where all this has been done or attempted. (Com. vs. York, 9 Metcalf Rep., 116; 2 Bennett & Heard's Lead. Crim. Cases.)

This bill, in that broad and comprehensive philanthropy which regards all men in their civil rights as equal before the law, is not made for any class or creed, or race or color, but in the great future that awaits us will, if it become a law, protect every citizen, including the millions of people of foreign birth who will flock to our shores to become citizens and to find here a land of liberty and law.

But there is a present necessity for this bill which I find forcibly stated thus:

"The fact that no single southern Legislature has yet recognized the right of blacks to the civil rights accorded to every white alien, suffices to prove the need of such legislation by Congress. We believe no single southern State has yet enabled blacks to sue and be sued, to give testimony and rebut testimony on equal terms with whites. All that they do, under the pressure of necessity, is meanly, grudgingly, shabbily done. What can be more absurd than to provide that a black may testify in cases between blacks and whites, but not when the parties are both white? If he would even swear falsely, would he not be likely to do so in a case between a white and a black? And if his oath can be taken in cases where he will naturally have a bias, why not in cases where he is likely to have none?"

"Consider the case of a riotous white attack on a colored school kept by a white woman. A black who witnessed the outrage is called to tell what he knows, and turned off because the schoolma'am was white, like the rowdies; so he is not a competent witness, unless he can swear that the roughs assaulted also a pupil; then he may be. Why is the distinction made but to insult and degrade the blacks?

"The Cincinnati Commercial has a letter from a correspondent traveling through Mississippi, who states that the barbarous vagrant law recently passed by the rebel State Legislature is rigidly enforced, and under its provisions the freed slaves are rapidly being reenslaved. No negro is allowed to buy, rent, or lease any real estate; all minors of any value are taken from their parents and bound out to planters; and every freedman who does not contract for a year's labor is taken up as a vagrant. The officers of the Freedmen's Bureau are often not accessible, and the freedmen are kept back, by the distance, from complaining. Finally, as the writer estimates, it would take an army of twenty thousand men to compel the planters to do justice to the freedmen.

"This bill takes right hold of this matter, and subjects the oppressors to pains and penalties which they will seldom choose to invoke."

Since this statement of the condition of southern law, I believe Georgia, by an act of March 17, 1866, has made provision for the enforcement of civil rights.

It is barbarous, inhuman, infamous, to turn over four million liberated slaves, always loyal to the Government, to the fury of their rebel masters, who deny them the benefit of all laws for the protection of their civil rights. To do so, would make the age of Draco and Nero

that the Freedmen's Bureau now, by order of the President, interposes military authority to secure the civil rights of the white Union population, and of the freedmen, the wards of the nation, in their new-born liberty.

I find in the testimony of Major General Alfred H. Terry, commanding the department of Virginia, which was taken before the reconstruction committee, March, 1866, the following:

"Question. What is the political character of the present Legislature of Virginia?"

"Answer. I judge, by its actions and by the language used by many of its members in debate, that it is not a loyal Legislature.

"Question. In case of the withdrawal of military protection from Virginia, what would be the condition of the loyal people in Virginia, and of the blacks?

"Answer. I think they would be in a lamentable condition. So great is the prejudice entertained, especially against those who were faithful in their obligations to the Government during the war, that I do not think they would receive any adequate protection for their rights of person and property from the courts, and I think that they would be persecuted through the machinery of the courts, as well as privately. Even now, when military law prevails in the State, and when military authority is supreme, attempts were made in the courts to punish the Unionists for acts done by them under military authority during the war, and I have been obliged to interfere, and release from prison men thus prosecuted.

"Question. Has that been of frequent occurrence?

"Answer. I have directed the cessation of proceedings in some five or six cases of this kind. In some of them the parties had been admitted to bail; in some, they were imprisoned. I have released those in prison, and in all cases have taken possession of the indictments and warrants, and, when bonds had been given, of the bonds.

"Question. Would the Unionists be safe in case of the removal of the protecting troops?

"Answer. I think not. And in that opinion I am supported by, as I think, the unanimous feeling of the Unionists themselves, which has been frequently and still continues to be expressed to me.

"Question. Has the liberal policy of President Johnson, in granting pardons and amnesties to the rebels, had the effect, in your opinion, to increase or decrease the feeling of respect toward the Government of the United States on the part of the people of Virginia?

"Answer. I am unable to trace results to their causes in that matter; but since the time when I took command, especially since military restraint has been so much relaxed as it has been during two or three months, disloyal publications have very much increased. They seem to have increased in proportion to the relaxation of military restraint.

"Question. The newspaper known as the Richmond Examiner has been recently suppressed by an order emanating from General Grant?

"Answer. Yes, sir.

"Question. For the utterance of disloyal sentiments, and of language insulting to the Unionists, and to the northern section of the country?

"Answer. Yes, sir.

"Question. How is it regarded? Is it regarded as one of the leading exponents of public feeling and opinion in Virginia?

"Answer. It seems to be an exponent of the secession feeling.

"Question. Did you execute the order of General Grant?

"Answer. I caused it to be executed. I gave the order to General Turner, who commands in Richmond, and he executed it.

"Question. Has the order been revoked or modified in any way?

"Answer. It has.

"Question. By whose order, so far as you know?

"Answer. So far as I know officially, by General Grant's order.

"Question. Has it been revoked?

"Answer. It has been revoked, temporarily, by order of General Grant, and, as I understand, on the condition that in the future it will not pursue a course detrimental to the Government, or the growth or expression, in acts and words, of Union sentiment among the people of the States lately in rebellion, or to the cultivation of friendly relations between the people of those States, or any of them, and the other States of the Union; and that it will not, in any way, fail in its editorial correspondence, or transfer of articles from other newspapers, to give support, countenance and friendship to the Union and its supporters.

"Question. What is their [the late rebels] treatment, generally, of the freedmen?

"Answer. It is very various. Many persons are treating the freedmen kindly and justly, endeavoring to accommodate themselves to the changed circumstances of the times, and to enter into the proper relations between them, as between the employers and the employed. Many others, on the contrary, treat them with great harshness and injustice, and seek to obtain their service without just compensation, and to reduce them to a condition which will give to the former masters all the benefits of slavery, and throw upon them none of its responsibilities.

"Question. So far as you can judge, which class is the most numerous, those who treat the freedmen kindly or those who treat them with injustice and severity?

"Answer. The latter.

"Question. Do you think they greatly predominate in numbers?

"Answer. I can hardly estimate the relative pro-